Here af-
ter folowetb a lytell
treatiſe called tbe
newe addi-
cions.

In this lytell treatise be conteyned certaine newe additions to be added to ꝑ secõde dialoge in englysshe lately made betwyxte a Doctour of diuinitie, and a Student in the lawe of Englande: And the sayd additions treate most specially of the power of the parlyament concernynge the spiritualtie and the spiritual iurisdiction: and may as it semeth be conuenyently called the newe additions.

¶ The first addicion. what the parliament may do concernynge the spiritualtie and the spirituall iurisdiction/ and what not.

DOctour. I praye the let me knowe thy mynde in this question/ whether laye men (as the thynketh) haue power to make any lawes of moztuaries? Stud. There was a lawe made of moztuaries in the parlyament holden in the .xxj. yere of our soueraygne lozde kyng Henry the. viij. by the assent of the kynge / and of all the lozdes spiritualt and tempozall of the realme / and of all the commons: and I holde it nat best to reason oz to make argumentes / whether they had auctozitie to do that they dydde oz nat. Foz I suppose / that no man wolde thynke/ that they wolde do any thynge/ that they hadde not power to do. Doctour. I meane nat onely of moztuaryes / that that statute meaneth of/ but I meane of suche thynges as be bzought to buryals of deade persones: wherof some concerne the seruice of god/ oz the reliefe of the soule/ and some the wozldly countenance: as in some places

the churche clayme to haue the taper / that standeth in the myddle of the herse ouer the herte of the corps / and some clayme to haue all the tapers: some also clayme to haue one of the torches that is about the herse / and some to haue all the torches. And if the bodye be brought in a charette / or with cote armour / or suche other / than they clayme all the horses and charet / and the apparell / or parte therof: and the coote armours or other lyke as sequeles to the bodye. And these rygbtes and dueties be called in some places mortuaryes: and of these I meane most principally in this question. I pray the lette me knowe what thou thynkest therein. Student. I praye the lette me fyrste knowe what is thy oppinion in this question. Doctour. I thynke that of suche of the sayde mortuaryes as the churche hath rygbte in / in suche maner as is before rehersed by prescription or otherwyse / and of suche thinges as be ordeyned at suche burialles to the seruyce of god / or to the reliefe of the soule / that the parlyament hath no power to prohibyte them / as to prohibite that the churche shulde haue no suche mortuaryes / or that there shulde nat be bydden to the buryal so many prestes, or that there shal nat be abcu-

so

so many tapers or torches, or that there shal nat be gyuen aboue suche a certayne somme in almes / that the parlyment hath no power to these thynges: for they be annexed to the ryght spirituall / whereof the temporall iurisdiction hath no power. For the inferiour may nat iudge vpon the superiour. But to make a lawe / that there shall nat be gyuen aboue so many blacke gownes / or that there shall nat be any herode of armes there / but he that is buryed were of suche a degree / or that no blacke clothes shall be hanged in the stretes fro the house where he dyed to the churche / as is vsed in many cyties and good townes / or to prohibyte suche other thynges / as be but worldly pompes / and be rather consolacions to the frendes that be on lyue / than any relefe to the soule / that is departed, wherfore the churche fauoureth them nat / I thynke the parlyament hath good auctorytie to make a lawe / I pray the let me knowe thy mynde what thou thynkest in these diuersities. Student. Verely I thinke that in al the cases before rehersed / the parlyament with a cause hath good auctorite to make lawes / as if it were ordeyned by the parlyment that at suche buryals the churche shulde neyther haue torche nor taper / horse

nor charette/ne none other thynge lyke/ but that they ſhulde alway perteyne to the executours to the vſe of the teſtatour: it were a good ſtatute/ and oughte to be obſerued/ as well by ſpyrytualle men as by tempozall: and this J take to be the reaſon why/ foz al goodes/ though they be in the handes of ſpirituall men/ be tempozall concernyng the body and nouryſſhyng the body as they do to tempozall men. And Johñ Gerſon holdeth the ſame oppinion/ as it appereth in his treatiſe of the ſpiritual lyfe of the ſoule/ the. ij. leſſon/ and the. iij. cozollarie/ wher of mencion is made moze at large in the firſt dialogue in englyſſhe/ the. iij. chaptre. And all tempozall thynges the kyng and his pzo genytours/ as in the ryght of the crowne/ haue in this realme alwaye ozdered/ and indged by his lawes. And therfoze J ſuppoſe that the parlyament may enacte/ that there ſhal nat be layde vpon a deed perſone but ſuche a clothe/ oz thus many tapers oz candeles ſet vp about him. And here J wold ſaye farther in one thynge/ and that is this/ that no pzeſcription had by auctozyte of the ſpirituall lawe may gyue no ryght within this realme to thoſe moztuaryes that we ſpeke of nowe/ ne to the ſayde moztuaries/

that

that be put away by the sayde statute: ne yet to any pension or annuitie: But if any ryght shall be wonne therin by prescription/it must be by a prescription had after the course of the lawe of the realme/and the lest prescription therof is this, that is to saye/that no mannes mynde may remembre the contrary therof/wherof the prescription is made. And if this be trewe/than haue many mortuaries be claimed/and taken in tyme paste/ without tytle, wherby the takers haue bene bounden to restitution. And that it is trewe that I haue sayde of suche prescriptions of mortuaryes and pensions/me thynketh hit maye appere thus: If there were a lawe made by the churche/that at everye buryall the curate shulde haue all the tapers and torches that were aboute the corpe/I suppose that it is clere/that that lawe bounde nat in this realme there as no prescription was therof before. And if a lawe made by the churche shuld nat in this case bynde, how shulde than a prescription/grounded onely vpon the lawes of the churche/bynde? I can nat se howe: but if it were in a countrey where the churche hathe soverayntie in temporall thynges/hit were the greate doute. And in this case many say/that a prohibition

ought of ryght to be graunted to prohibite the ſpirituall iuges / that they ſhall nat gyue ſentence agaynſte the preſcription of the kynges lawe, wherby any temporal goodes may be bounde, as wel as that they ſhal nat holde plee of that that belongethe to the kynges lawe / but ſuche a prohibicion is nat in vſe. But if it were enacted / that a prohibycion ſhulde hereafter lye in that caſe, I ſuppoſe that it were a ryght good and a reaſonable ſtatute. And alſo whether ſuche a preſcription, after the lawe of the churche, gyue tytle for tythes, is after ſome men the greatter queſtion: but I wyll no farther ſpeake thereof at this tyme. And as to the cote armour, ſhelde, and ſwerde, and ſuche other thynges as be ſometyme ſet vp at the burial of noble men, ſome men ſay that they belonge nat to the churche, but to the executours: and that they ought to remaine there to the honour of the body, and to the memoriall of the ſoule, as longe as they wyll endure. For there was neuer gyfte therof made to the curate, wherby any proprietie myght growe vnto hym. And a caſe moche lyke to theyr ſayenges is in the .ij. yere of kynge H. the .iiij. where an action of treſpas was brought for takynge away ſuche a coote

cooke armour. ¶. And there some were of opinion, that the action laye well/ howe be hit the case is nat iudged: but what so euer the lawe be therin, I thynke hit be no great doubte, but that if a statute were made, that they shulde belonge to the executours, that the interest of the curate what so euer he had therto before by prescription, constitution, or otherwyse, were determyned, and so me thynketh that the parlyament maye as directely make a lawe concernynge suche mortuaryes, as hit maye do of any other temporall goodes within the realme, and than as to the nombre of prestes and clerkes/ that shuld be bydden to such buryalles, I thinke that the parlyment may wel vpon a certaine payne prohibite, that none shall call to suche a buriall abone a certaine nombre of prestes and clerkes to be assygned by the parlyment after the degree of hym that is buryed, and specially to prohibyte, that none shall gyue any money or other reward to any abone that noumbre, though they come vncalled. For suche statutes be for ordrynge of temporall thynges, and to for se that the kinges subiectes shulde nat be charged but as the parlyament shulde thynke expedient for the welthe of the realme, and therfore they are

to be obſerued in lawe and conſcience. And thus I haue ſhewed the parte of my conceyte / what me thynketh concernynge the ſayd mortuaries. Doctour. I thanke the for the payne that thou haſte taken therin: and ſyth thou haſt ſome what touched / what the parlyament maye do in theſe mortuaryes / whych concerneth ſomewhat the ſpiritualtie / I praye the that thou woldeſt ſhewe me ſome what more of thy mynde / what the parlyament may do in other thynges concernynge the ſpiritualtie. For I thynke it were good and neceſſarye to be knowen for the good order of conſcience of many perſones and the appeſyng of many and great diuerſities of opinions in this realme. Student. To treate of that matter at length it wold aſke a great tyme: but I ſhall with good wyll brefely touche ſome artycles therof / and haply thou ſhalte by them knowe the better / what the parlyament maye do concernynge the ſpirituall iuriſdiction in other caſes lyke. But I praye the take me nat, that my meanyng is, that I wold that ſuch ſtatutes ſhuld be made / as I ſhall ſpeke of: for I do it nat to that intent but onely to ſhewe the power of the parlyament what they may do if they lyſte to exercute their power.

¶ The ſtconde addicion. What the parlyament may do concernynge the ſpiritualtie and the ſpirituall iuriſdiction, and what nat.

STudent. I ſuppoſe it may be enacted by the parliment that no landes ne other enheritance ſhall hereafter be gyuen into moztmayne by lycence noz without lycence / but that all feoffementes / fynes, kraffes, and recoueries by couyn oz by aſſent of the parties hereafter made oz had foz moztmayne oz to the vſe of moztmayne ſhall be voyde, and that the houſe ſhall take no intereſt by it: but that it ſhall remayne ſtyll with the feaffours oz gyuers, oz to ſuche other vſe as the parlyament ſhall appoynte. Foz lyke as the parlyament maye ozdeyne / that all feoffementes and fynes made to any maner of perſone ſhall be voyde / and that euerye man ſhall ſtande ſtyll ſeyſed of his lande without makynge of any alteracion of poſſeſſion therof to any other, moze ſtronger hit maye ozdeyne, that no alteracion of poſſeſſion ſhall be made into moztmayne. And that a ſtatute maye be made, that there ſhall be no alteration of poſſeſſion

possession made of landes to no man, it maye appere by the wordes of Johñ Gerſone in his treatiſe of contractes, the .vj. conſideracion: where he ſaythe thus: Contractes be nat therfore precyſely to be ſayd vnkaufull and voyde/bycauſe they maye be redemed by the lawe made for ſuche redempcion. For he ſayeth, that they that wolde ſay ſo, wold condempne the hygh maker of lawes, that is god hym ſelfe: whiche in his iudicialls lawes gyuen by Moyſes to the Jues (as the texte is open, leui. xxv. wylleth, that he that ſelleth his enheritaunce may redeme it. And if he redeme it nat, yet it ſhulde retorne agayne in the yere of Jubylie. for it is there ſayde to the Jewes thus: All the region of your poſſeſſion ſhall be ſolde vnder the condicion of redemption. And thoughe that lawe byndeth nat nowe Chriſten people, yet a like lawe therto might be made by chriſten princes, whiche than by that newe inſtitucion ought to be obſerued and kepte, as diuers of the ſayd iudicials haue ben in many coūtreys. Thus far be the wordes of Johñ Gerſon. And me thynketh, that if a lawe myght be made, that if a man ſell his lande, that he maye neuertheles redeme hit within certayne yeres, whether the byer wyl or no,

though

thoughe no ſuche condicion were ſpoken of at the makynge of the bargayne: that lyke reaſon is that a law may be made, that there ſhall be no ſales, but that euerye man ſhall contynually ſtande ſtyll ſeiſed of his landes, as I haue ſaid before. And I ſuppoſe verily that ſuche a ſtatute ſhulde be good and profitable as wel for them that haue ſuche landes in mortmayn as for many other. And Baldus de Peruſio ſaythe, that ſuche a ſtatute ſhulde be good to prohibyte that no landes ſhulde come into mortmayne, but nat to prohibite that no goodes ſhulde come in to mortmayne. And me thynketh that his ſayenge is good and reaſonable.

¶ The.iii.addicion. what the parliament may do concernyng the ſpiritualtie, and what nat.

STudent. I thynke alſo, that the kyng by parlyament may breke al appropriations, that be made agaynſt any ſtatute, or agaynſt the good ordre of the people, or agaynſt the cõmen welth/ and the cauſe is this: There can no churche be appropryed, but that the patronage of the aduouſon

aduouſon therof muſt be gyuen beſore the appropriacion to the abbotte, or priour, or other, to whom the propriacion ſhalbe made, and to theyr ſucceſſours, for if hit be gyuen but for terme of lyfe/the appropriation cannat ſtande in effecte but for terme of lyfe. And bycauſe the aduouſon is a temporall enherytaunce, therfore it is vnder the power of the parlyament to ordre hit, as hit ſeeth cauſe. And to bryngе hit agayne to be preſentable, as it was fyrſt. And in lyke wyſe, if a man bryngе a wrpt of ryght of aduouſon agaynſt hym that hath ſuch an aduouſon appropried to his houſe, and recouereth the aduouſon: the appropriacio is diſſolued. For the appropriacion can no lenger contynue/ than they haue the patronage. And the parlyment may leaue the aduouſon to the houſe as an aduouſon preſentable/ if they ſe cauſe, or they may gyue hit to the fyrſte gyuer/ or otherwiſe diſpoſe it, as the matter requireth. And vnder ſuche maner all the vicarages that were vnyed, annexed, or approprred, fro the fyrſt yere of kyng Rychарde the. ij. vnto the parlyament holden in the. iiij. yere of kynge Henry the. iiij. were diſapproued. And by the ſame ſtatute of Henry the. iiij. it is enacted/ that all Vicarages approprred

after

after the ſtatute made in the.xv.yere of king Richarde agaynſte the fourme of the ſayde ſtatute ſhalbe diſappropried, except the Vicarage of Haddenhā in the dioceſe of Ely: as in ꝑ ſaid ſtatute appereth. But yet I ſuppoſe, that the parlyment may nat make an appropriacion without ſpiritual aſſent: ne I meane nat, that it were good, that all appropriaciō ſhulde be broken: but I haue ſpoken this, to ſhewe what auctorite the parlyament hath, if they wold execute it. And if there be a reaſonable conſideracion why it is done, than the diſappropriacion holdeth as well in cōſcience as in the lawe. And good it is, that the auctorite of the parlimēt be knowē in this behalfe to the intēt that it may cauſe them the rather to obſerue ſuch ſtatutes as be all redy made of ſuch appropriaciōs, & to diſpoſe ſome part of the frutes therof amonge the powre pariſhins, according to the ſtatute of.ꝑ.xv.yere of kyng Rychard the.ij.made in that poynt. And if hit were aſked them, why they haue nat obſerued the ſayd ſtatute, they haue none other excuſe, but either to ſay that they knewe nat the ſtatute, orels that the ſtatute had no power to binde thē to it. And I ſuppoſe verily that neither of thoſe ſayenges can be any reaſonable excuſe vnto them in that behalfe.

The

¶ The.iiij. addicion concernyng the power of the parlyament as a-nenst the spiritualtie.

STudent. All the ſeintuaries in Englande as well in churches as other/ and alſo where a man ſhall haue his clergye/ and where nat/be vnder the power and auctoꝛytie of the parlyment. Doctour. I ſuppoſe that it is by the ſpiritual auctoꝛite that a man ſhal be defended by a ſaintuary/ oꝛ haue his clergie. Student. Naye verely: but by the olde cuſtomes and maximes of the lawe of the realme. And therfoꝛe the kynges Juſtyces ſhal iuge where a man ſhal haue ſeyntuarie oꝛ his clergye, and where nat. And if the oꝛdynarie wyll nat come to receyue them that be clerkes, the kynges Juſtyces may ſet a fine vpon hym. And alſo the kynges pardon ſhall diſcharge one/both of the ſeyntuarye and out of the byſſhops pꝛiſon. And ſo it appereth, that the byſſhops haue the keppynge of ſuche as be admytted to theyꝛ clergye by auctoꝛitie of the kynges lawes, and nat by their owne auctoꝛite. And though the title of ſeintuarye and the liberte where a man ſhall haue his clergie be vnder the power of the parlyament, yet the parlya-

ment

ment hath nat broken them, ne extēded his hole power on them, to put them generally awaye: but in perticuler cases some tyme it hath. Doctour. Wyght the parlyament breake a seynt arie/that is graunted by the pope? Studēt. The pope by hym selfe may make no seyntuarie in this realme: but if the kynge and the pope to gether do it/ the olde custome of the realme serueth, as moste men saye, that it is good. But yet if the kynge after that graunt, by auctorytie of his parlyament auoyde his owne graunt / than remayneth but onely the popes graunt: and that suffiseth nat to make a seyntuarie, as I haue sayde before: but the parlyament with out the pope maye make a seyntuarie, with suche penalties as they shall thynke conuenient to set vpon the brekers therof. But if the pope do after confirme that seyntuarie/ and graunt that no man vnder payne of the censures of the churche do breake it: hit is the stronger, howe be it the seintuarie taketh his full strengthe in that case as to the lawe by the parlyament.

¶ The. v. addicion concernynge the power of the parlyment anenst the spiritualtie.

STud. I ſuppoſe alſo, that the parliment may aſſigne al the trees & greſſe in churche yardes either to the perſone, to the vicar, or to the paryſſhe, if they ſe cauſe. For though it be hallowed grounde, yet the freholde therof, the trees, & herbes are thinges tẽporal/as they were before the halowyng, & that the plymẽt hath power to ordre them (as is ſayd before) it appereth by a ſtatute that is called Statutũ cõtra rectores, ne ꝓſternãt arbores in cœmiterio, that is to ſay, the ſtatute againſt perſons, that they ſhal nat cutte downe trees in the churche yardes. In whiche ſtatute it is recyted, that the ſoyle of the churcheyarde/whiche in the lawe of Englande is called the freholde/ belõgeth to the church. And thã the ſtatute goth farther / & ꝓhibiteth all ꝑſons, that they ſhall nat fell them/ but it be for the neceſſary reparacions of the chaunceli, but that they ſhall let them ſtande ſtyl to defẽde the church fro the great tempeſteous windes and wether. and than it ſemeth, that lyke as the parliment hath auctorite to prohibyte perſones, that they ſhal nat fell the trees in the churche yarde/whan they wolde, that it hath auctorite as well to take the hole propyetie of the trees fro them if they ſe cauſe, and that they may giue them

to the

to the paryſſhe, if there be reaſonable conſi-
deration to moue them to it. And yet neuer
the leſſe the iuges for a churche yarde wyll
moſt commonly put the court out of iuriſdic-
tion, and rempytte it to the ſpirituall lawe, to
determine to whom it belōgeth of right, but
J take that to be by a cuſtome, and a fauour
of the lawe, and nat of a mere rygbte, as of
the lawe of god. And therfore if the parlia-
ment wolde ordeyne, that the rygbt of chur-
che yardes, and of all thynges in them ſhuld
be tried in the kynges courtes / J thynke the
ſtatute migbt weil do it. But as J haue ſaide
before, the parliment wyl nat extende their
power to many thynges, that they migbt do
if they wolde, and ſpecially in theſe matters
J thynke they wyll nat. And ſurely as well
the parliament as the kinges courtes, of the
kinges benche q̄ cōmon place, q̄ al the cōmen
lawe (as J ſuppoſe) haue ben q̄ be as fauo-
rable to the ſpiritual iuriſdiction, as well in
ſuch church yardes, tithes, offringes / q̄ ſuch
other as any lawe hath ben: in ſo moch that i
p̄ kinges bēche q̄ comen place they wil ſuffre
no iſſue to be ioined ſpecially betwixt perſon
and perſone, wherby the right of the tithes
mygbt be tried: howe be it that in the eſche-
ker ſome tyme they haue done otherwyſe.

And for a farther proofe, that the parlyment maye order a churche yarde and trees and greſſe, as is aforeſayd/ſome make this reaſon, they ſaye it is enacted by the ſtatute of Ric. the. ij. the. vb. yere/and the. v. chaptre, that lādes that be made churcth yardes/ and be hallowed and made burialles without licence of the kynge and chiefe lordes/ſhall be in caſe of mortmayne: And they ſaye, that of that it followeth, that if the kyng or lorde entre/for that the churche yarde was made agaynſt the ſtatute, that the hallowyng ther by is adnulled: for els (they ſay) the ſtatute ſhulde be voyde. And if the ſtatute haue power to adnull the halowinge/ made agaynſt the ſtatute, they ſaye more ſtrenger it maye order the trees and greſſe, that be growyng vpon it/bycauſe they be temporal, as is ſaid before. And in that caſe if the lorde entre by reaſon of the ſtatute, and the perſon putteth hym out, and the lorde bryngе aſſiſe, and the perſon pleadeth/ that it is a churche yarde, and demaunde iudgement, if the courte wyll holde plee therof, and than the lord ſheweth howe he entred by force of the ſayd ſtatute/ and pleadeth in certaine: that is a good plee to gyue the courte iuriſdiction. And thus I ſuppoſe verily that the parlyament maye

order

ordre the trees and gresse in a church yarde/ as I haue sayde, and yet the grounde to remayne styl hallowed/ as it dyd before.

¶ The.vj.addicion concernynge the power of the parlyment anenst the spiritualtie.

STudent. I suppose also, that it maye be enacted by auctorytie of the parlyament, that if a spirituall man suffre his houses to decay and dye: that his successour shall haue remedy in the kynges courte, agaynst his executoure, and that it maye be prohibited, that no sute of dilapidacion shalbe hereafter taken in the spiritual court/ for it is brought to haue amendes for the wast and decay done in houses by his predecessour, whiche is all temporall, and belongethe to the kynges courtes, as wastes and trespas do. And howe be it/ that no action lyeth for the successour in suche case for the waste at the commen lawe: yet that is nat sufficient to proue, that an accion may lie therfore at the spirituall lawe. For if a persone of a churche make a lease for terme of yeres, and the lessee dothe waste/ in that case

the person shall haue no remedy at the cõmen lawe/and yet he shall nat therfore haue any remedy at the spirituall lawe. And also in diuers statutes it appereth,that if a mã haue iugement in the spiritual lawe to do penaũce as is enioyned hym, that the iuges spirituall may nat tourne that penaunce in to money/ onelesse the partie wyll frely aske it: leeste they myght by that meanes gyue iugement of temporall thynges. And if they may nat tourne penaunce into money, but by the frewyll of the partie/ than moze stronger they may nat holde ple in this mater,where none other thyng is in variance but wast of houses,and where are demaunded damages/as was in the prohibicion of wast at the cõmen lawe. And therfore some mẽ say, that a premunire facias or a prohibicion lyeth in this case/ at this daye, if the grounded of the law were thzongbly loked vpon: howe be it bycause of the custome so lõge vsed & suffred to the cõtrary/parauenture it were nat good to alter the lawe therin without parlyment: But they thynke verily that the parlyament may well alter it. And to ensorce their reason they saye, that syth the courte Chzistien may nat by the lawe awarde damages for beating of a clerke/ but onely to put hym to

penaunce

penaunce for layenge violente handes vpon the clerke/that more stroger they may nat in this case awarde damages for the wast/that is nothing els but a temporal offence.

¶ The.vij. addicion concernyng the auctorite of the parlimēt & the spiritualtie.

STudent. If it were ordeined by statute/that no preste shuld weare any cloth made out of the realme,nor aboue suche a price/vpon a certaine payne/or that chaplayns shall nat take aboue so moch for their salary,I suppose that these statutes were good/bicause they cōcerne the ordring of temporall thynges: but to appoynt the fassyon of their garmentes or of their tonsure/it is more doute whether the parlymēt may set any peyne vpon it or nat. Doctour. It hath nat ben sene/that any penal statutes haue bene made by parlyament concernynge apparel of the clergie in this realme,for that hath alwayes bē ordred by the conuocation. And also it appereth in the statute made in the.xxxvj. yere of king E. the. iij. the. viij. chaptre/that whan defaute was founde by the cōmons for excessiue wages of chapleins that the parliment dyd nat ordre the wages

But the kynge and his lordes, at the peticion of the commons, moued the archebysshop of Caunterbury therof / and therupon he and other bysshoppes afterwarde enformed the parlyament / that they had sette the wages in certayne / and that no chaplayne shulde take more than they had appoynted / upon a payne by them lymytted. And if any spirituall men gaue more. &c. they to forfayte the double to certayne vses by the conuocacyon appoynted. And that no chaplayne shulde remoue from one diocese to an other without letters of thordinarie, from whose diocese they remoued. And it was than ordeyned by the parlyament, that no temporal man shuld gyue more wages than the bysshoppes had assigned / upon payne to forfayte as moche to the kyng: as in the sayd statute appereth. And also the statute wylleth farther / that he that fyndeth hym greued agaynst that ordynance, shal haue his remedy in the Chācery / But it appereth nat, that there shulde be any remedy therupon at the commen lawe. Student. The vertue of spirituall men, and the fauour of the realme vnto them, and theyr wysedome / polycie, and hygh auctoryte be and haue ben great in this realme: wherby many thingis haue ben forborne / that might lawfully

laufully haue bene done/ as I ſuppoſe. And in the ſtatute made in the. iij. yere of kynge Henry the .v. wages of chapleynes were ſet in certayne by the parliament. And trouth it is, that by the ſayde eſtatute of .xxxvj. E.3. the.ix.chaptre, it is enacted, that who ſo euer fyndeth hym greued agaynſt the ſayd ordynaunce, made of the ſayde wages, ſhall haue remedie in the chancerie, as thou ſayeſt. And therfore it folowyth therupon, that if chapleynes may by auctorite of the parlyament be laufully put to anſwere in the Chancery before the Chancellour, whiche ſitteth there onely by the kynges auctorytie / that they may as well vpon a reaſonable cauſe be put to anſwere by auctorite of the parliament after the proceſſe of the comon lawe. Doctour. By ſub pena / whiche is the proceſſe vſed in the Chauncerie / the perſone ſhall nat be arreſted, but be onely warned to appere. And it is directelye ayenſt the canons, that a preeſt ſhulde be arreſted, and parauenture at the makynge of the ſaide ſtatute the parliament had reſpecte therto / and thoughte it reaſonable / that they ſhulde rather be put to anſwere in the chancerie, where their bodies ſhulde nat be arreſted, than at the common lawe, where they myght be areſted. Studēt.

Thoughe the persone shall nat be arested by a sub pena / yet if he appere nat in the ende he shalbe proclaimed rebell / and than therupon his bodye shall be arrested. And also if the partie wyll nat performe the iugement gyuen upon a sub pena, there is none other execucion in the Chauncerye / but to commytte hym to prison tyl he haue performed it. And therfore (as it semeth) the parliment regarded nat that poynt. Wherfore I suppose rather, that the statute was made as to that article upon this consideration, that bycause upō a decree made by the connocation, there lyeth no action at the common lawe / but at the spirituall lawe / and bycause this matter concerned gyuynge of wages / whiche were thynges temporall, hit was thoughte reasonable / that the offenders agaynste the decree made in the connocation / shulde be putte to aunswere in the Chauncerye / whiche is the kynges courte : But hit myghte as well haue ben enacted / that they shulde haue bene putte to aunswere at the common lawe as in the Chauncerye / if the parlyament wolde / as I suppose. But to that poynte / that thou haste spoken of before / that hit is agaynste the canons of the churche / that a preeste shulde in any cases be

arrested

arrested / the common lawe pretendethe / that the kyng as in the right of his crowne / and by his commen lawes hath that auctorytie, and so hit is dayly put in execution. And if the cõmon lawe be so all redye / than there nedethe no statute to be made of hit. Neuer the lesse bycause our entent nowe at this tyme is to speake onely / what the parlyament maye do concernynge the spiritualtie / and what nat / therfore I wyll no farther speake of that matter but onely this / that if there be offence in them / that execute the common lawe therin / that is a great meruayle, that spirituall men haue done no more to refourme hit / than they haue done: and if there be no offence therin / than were it good / that hit were so openly knowen, that all scrupulositie of conscience mygbte be auoyded. For as hit standeth nowe / there resteth in some persones / that execute the lawe therin, a doubte in conscience: And by reason of that doubte they offende / that shulde nat offende, if the matter were playnelye declared. For than wolde they eyther clerelye cease, or elles procede accordynge to the lawe with good auctorytie.

The

¶ The. viij. addicion concerupng the auctozitie of the parlyament and the ſpiritualtie.

STudent. Jf there were a ſciſme in the papacye, who were ryghtwyſe pope/the kynge in his parlyament/ as the hyghe ſoueraygne ouer the people, whiche hath nat onely charge on the bodyes but alſo on the ſoules of his ſubiectes, hath power foꝛ the quietnes and ſuretie of his realme to oꝛdeyne and determyne, who ſhall be in this realme holden foꝛ ryghtwiſe pope, and may commaunde, that no man ſpirituall noꝛ tempoꝛall ſhall name any other to be pope / but hym that is ſo auctoꝛyſed in the parlyament: ne ſue to any other as pope, but onely to hym. And a ſtatute of lyke effecte was made in the. iij. yere of kynge Richarde the. ij. the. xij. chaptre, where pope Urban was adiuged in the parliamēt to be laufully choſen pope. And ſythe the parlyament, foꝛ apeſynge of diuiſions that might ryſe in the realme by ſuche a ſciſme in the papacie, may ſette a remedy: why than may nat the kynge and his parlyament in lykewyſe, as wel to the ſtrength of the feyth and to the helth of the ſoules of many of his ſubiectes / as to

ſaue

ſaue his realme from being noted of hereſy, ſerche the cauſe of ſuche diuiſion as is nowe in the realme by diuerſities of ſectes and opinions: and to knowe alſo by whom and by what occaſion the noiſe hath riſen/that there ſhuld be ſo many hereſyes in this realme as are noted to be: And whether there be ſuche hereſies or nat, & nat to put any to anſwere therupon after the proceſſe of the lawe: but charitably to examine the trewth therin, and therupon by theyr wyſdomes to deuiſe ſome charytable waye for vnitie and peace. And great rewarde ſhall they haue of god, that putte to theyr handes to auoyde the great daunger, that is lyke to fall to many ſoules as well of men ſpirituall as temporall, if this diuiſion contynue longe. And as farre as I haue herde, al the articles that be myſlyked in this behalfe, ſowne eyther agaynſt the worldly honour, worldly power, or worldly ryches of ſpirituall men: but to expreſſe the articles I holde it nat moſte expedient. And verily if it be true that ſome haue reported, many of them be ſo farre agaynſt the trewthe, that I ſuppoſe no chriſten man wyll holde them, beleuyng them to be true: but that they do it for ſome other conſideration. And thoughe they do nat well in that doynge

doynge, howe good so euer the consideracyon be, for no euyll is to be done, that good shulde folowe: yet they do nat so euyll, as if they held them, beleuynge them also to be trewe/ne hit wyll nat be so harde to remoue them fro it, as it wolde be/if they dyd beleue them in dede. For if hit be so, that they beleue them nat, than the cause remoued / hit is to thynke, that they wolde lightly be reformed. And therfore if hit were ordeyned for a lawe: that euery curate at the dethe of euery of theyr parryshens/ shulde saye for theyr soules in audience Placebo and Dirige, and masse, without takynge any thynge therfore: and that they shulde also at a certayne tyme, there to be assigned by parlyament, as it were ones in a moneth, or as shalbe thought conuenient, do in lykewise, and praye specially for the soules of their parryshens, and for al Christen soules, and for the kynge and the holle realme / And religious houses to do after the same maner/ I suppose, that in shorte tyme there wolde be but fewe, that wolde saye/ there were no purgatorie. And in lyke wise if hit were ordred so by the pope/ that there myght be certayne generall pardons of full remyssion in dyuers parties of the

realme

realme, whiche the people myght haue for ſavenge of certayne orysons and prayers/ without payenge any money for hit/ hit is nat vnlyke, but in ſhorte tyme there wolde be very fewe / that wolde fynde any defaute at pardons. For verilye it is a great comforte to all Chriſten people to remembre, that our lorde loued his people ſo moche, that he wolde to their relieſe and comforte, leaue behynde hym ſo great a treaſure: as is the power to graunt pardons: whiche as I ſuppoſe nexte vnto the treaſure of his precious body in the ſacrament of the alter, may be accompted amonge the greateſt. And therfore he labored greatly to his owne hurte, and to the great heupnes of all other alſo, that wolde endeuer hym ſelfe to proue, that there was no ſuche power keefte by god. And I ſuppoſe verily that if ſuche fre pardons were graunted (as I haue ſpoken of before) and that than other pardons were afterwarde graunted, to haue the aide of the people for ſome charitable cauſe, as to reſyſte the Turke or ſuche other: that the people wolde as dilygentely receyue thoſe pardons to be partakers of the good dede, as they wolde be, if there were no

ſuche

ſuche free pardons graunted before. And I thynke verily, that if the kynges grace, and his parlyment, loke nat vpon theſe matters, it wyll be herde to tell/ who ſhall be able to do yit. And vnder this maner Naitanus kynge of Pictes toke great labour and diligence for the appeſynge of the diuiſion and variaunce, that was amonges his ſubiectes (as well ſpiritual as tempozall) for the due tyme of keppng of the Eſter. For ſome men in that varyaunce kepte Eſter, whan other kepte palme ſonday, and that was ſeen ſome tyme in one houſe. In whiche ſciſme many great clerkes and holy men were of ſeuerall opinions, in ſo moche that the bleſſed man ſaynt Aidan/ whiche was a holy byſſhoppe, erred longe in the due tyme of keppnge of Eſter, and had many folowers, and yet was he no heretike. For that that he dyd therin/ he dydde with mekenes, and as he thought ſtode accordinge to the truthe: and therfore there was but litell offence in hym. For appeaſinge of this ciſme, the ſaid kynge Naitanus ſent meſſangers to ſaynte Colfryde, than beinge abbotte of the monaſteries of ſaynt Petre and Paule, that be vpon the riuers of Tyne and Twede/ and where as venerable Bede was brought vp, to be inſtructed

ſtructed in the due tyme of keppyng of Eſter, and of the tonſure of clerkes / whiche was than alſo in varyaunce, wherupon the ſayde holy man Colfryde wrote a letter vnto the ſaid kynge Naitan⁹, declaryng vnto hym by many auctorytes of ſcripture, the very due tyme of keppynge of Eſter / and ſhewed his mynde alſo in the ſayde tonſures / and whan the ſayde letter was redde before the kynge and his lordes, & that the tenure therof was plainly interpretate and declared vnto hym, he roſe vppe from amonge his lordes, and kneled downe vpon his knees, and thanked almyghtye god, that had ſente hym ſuche a gyfte out of the countreye of Englande. And it is nat to thynke, that he dyd thus, intendyng to gyue ſentence therin by his owne auctorite, for that belonged nat to hym, but he dyd it to knowe the trouthe / and that he myghte therupon ſhewe his fauour to the better parte. And if the kinges grace wolde in this caſe endeuer hym ſelfe to knowe the trouth of the cauſe of this diuiſion, that he ſhall in ſome article ſhewe his fauour to the one parte, and in ſome other artycle to the other parte. Alſo whan the hereſie of Eutiſetis roſe at Conſtantinople, whiche erred in the trinitie / the bleſſed man ſaynt Theo-

doure/than archebysshoppe of Canterbury, to the intēt he wold kepe the church of Englāde fro that errour, gathered all the clergie to gyder, and examined them diligently what they thought concernynge the articles of the heresie. And whan he founde them all stedfaste in the catholyke feyth, he wrote a letter of their beleue: and for instructiō of them that shulde come after, sent it to Rome. And the effecte of his letter was this.

We beleue and constātly confesse after holy fathers, to be verily and truely the father, the sonne, and the holy gooste/ a Trinitie in Vnitie, and a vnitie cōsubstantial in Trinitie, that is one god in thre persones consubstantial of equal glory and honour.

And amonge other thinges that he wrote/ whiche perteyned to the feythe, he sayde afterwarde.

¶ We also accepte the holy and vniuersall fyue synodals of holy fathers: and we accepte and glorifie oure lord Jesu Christe, as they glorysied hym, nothynge addynge nor dyminisshynge, And we glorifie god the father withoute begynnynge, and his onely sonne, gotten of the father before the worldes/ and the holy gooste procedynge of the father and the sonne so as can nat be spoken:

as they

as they, that we haue remembred, the holy apostels and prophettes and doctours haue preched and taught.

And me thynketh, that these exāples shuld some what encorage them, that nowe maye do good in this euyl and perylous tyme, to folowe som what after / and euery man, after as his degre is / to do the best that he can therin to helpe it / not regardynge worldely honoure / worldely ryches / nor synguler profitte: but onely the honour of god / and the lone of theyr neyghbours, and helthe of theyr soules. And if they do so, vndoubtedly the warke shall prospere well in theyr handes. And lette no man / that maye do good in this matter, suffre it to ouer passe as thoughe hit perteyned nat to hym: For almyghty god hath gyuen a cōmaundement to euery man vpon his neyghbour. And to encorage them selfe yet the more vnto it, lette them remembre the wordes, that be spoken in the fyrste booke of the reuelations of saynt Brygette / the .lviij. chaptre, where our lorde Jesu amonge other thynges sayde to our ladye thus: I wolde (sayde he) if it were possible, suffre for euerye man suche a payne as I ones suffered for all men vpon the crosse / so that they myghte comme

to the inheritaunce promysed / happy be they than, that helpe soules to that inheritaunce, that our lord desireth so moche to haue them come vnto. And somtime it hath be brought aboute by faire meanes, that coulde nat be done by rigour and compulsion. And if my lordes and maisters spirituall wyll nedelye forth with their strayte corrections and punissemētes, without finding some prouision, that the myndes of the people maye some what be eased / in suche thinges as they haue misliked and grudged at in tymes paste: it is to feare, that there wyll nat folowe so good frute of it as there wolde do, if they wolde do it, & that they wold shewe them selfe euidently to do nothing but onely of a zele and loue vnto the people. And it is a doute to some men, whether some of the thinges that the people myslyke and fynde defaute at / be occasions actiue or passiue to the people to offende. But whether they be the one or the other / charite wold (as it semeth) that some diligence shulde be put to amoue them, thoughe percase they were nat cuyll but indifferent, or paraduenture good of them selfe.

The

¶ The .ix. addicion concernynge the auctoꝛytie of the parlyment and the ſpiritualte.

STudent. Jf it were enacted by the parlyament, that if a man calle an other theſe oꝛ murderer, that an actiō ſhuld lye therVpon at the common lawe, and that no ſuite ſhulde lye therupon at the ſpirituall lawe, J thinke it were a good ſtatute/foꝛ the matters wher Vpon tho woꝛdes ryſe are onely to be determined by the commen lawe. And ſo it is if a man calle an other Villayne, an action lyeth theron at the commen lawe if he be free, and nat at the ſpirituall lawe/bycauſe the rightes of the Villenage maye nat be tried but at the cōmen lawe/and mooſt men ſay, that if there be an inditemēt of felony at the cōmen lawe that than there lieth no ſute therof in the ſpirituall lawe, ſo that there nedeth no ſtatute to be made in that poynt. Doct. Jf a ſtatute were made/that an action ſhulde lye at the cōmen lawe of ſuche woꝛdes as a man hath any loſſe oꝛ woꝛldly hyndrance by/though they haue beſoꝛe tyme bene Vſed to be ſued onely in the ſpirituall courte: thynkeſt thou

the ſtatute were good. Student. I thinke the ſtatute were good / and moſt cõmõly vpon ſuche wordes ſome worldly loſſe or hindrance one way or other dothe folowe, but I thinke that in tho caſes the parlyment may nat prohibite / but that they that liſte may alſo take their ſutes at the ſpiritual lawe if they wyl, ſo that the ſpiritual lawe make no recõpence to the partie. Alſo of all annuities, whether they haue begynnynge by preſcription compoſition reall or otherwiſe, I ſuppoſe it may be enacted, that the ſute ſhalbe taken only in the kynges court, & nat in the ſpiritual court. for nothing is to be recouered in ſuche ſutes but money, which is temporal in whoſe handes ſo euer hit come ſpirituall or temporall.

The .x. addicion concerning the auctorite of the parlimẽt as to the ſpiritualtie.

STudent. If it were enacted, that no religious perſon ſhuld receiue into the habite of their religion any childe vnder a certaine age to be apointed by the parlimẽt / and that after his entre he ſhuld nat be remoued fro ꝑ place that he was receyued in with in a yere after vpon a certayn payne without aſſent of his frendes: I thinke it were a good

eſtatute

eſtatute/ſoꝛ that ſtatute ſhulde nat pꝛohibite entre into religion. Foꝛ if hit dyd ſo, I ſuppoſe it were nat to be obſerued: but it oꝛdereth the maner of entre into religiō, foꝛ ſuche infātes whiche is right expediēt foꝛ the cōen welthe. And a ſtatute of lyke effecte is made foꝛ the foure oꝛders of freres in the.iiij.yere of kynge Henry the.iiij. where the.iuſ. pꝛouincials of the ſayde.iiij. oꝛders were ſwoꝛne, by layenge theyꝛ handes vpon theyꝛ bꝛeaſtes in open parlyament to obſerue the ſayde eſtatute. And vpon the ſame grounde ſome ſaye, that if hit were enacted, that no man vpon a certayne peyne ſhuld affie the daughter in her fathers houſe, without aſſente of the father, hit were a good ſtatute: and yet a ſtatute hath no auctoꝛitie to pꝛohibite noꝛ to conſourme no ryghte of matrimonie: but as the churche pꝛohibiteth it, oꝛ confermeth it. And therfoꝛe if hit were pꝛohibited, that no loꝛdes ſonne ſhulde affie an houſbande mannes daughter, oꝛ ſuche other/ and if he dyd thaffiaunce to be voyde, I thynke that ſtatute were voyde. But if the ſtatute were/ that no loꝛdes ſōne, vpō a peyne, ſhuld make affiance with any woman/ that is a ſtranger boꝛne, without the kynges licence/ I thynke that ſtatute were good, foꝛ hit pꝛohibitteth

nat matrimonye, but ſetteth an ordre after what maner it ſhal be made, and that vnder ſuche forme as may haply be neceſſarye for the ſuretie of the realme. And of a lyke effecte therto is the lawe, that the kynges wyfe dowe ſhall nat mary without the kynges licence/ and that ſhe ſhall be ſworne therto in the Chauncerye whan ſhe is endowed. And lyke lawe is alſo, that the lorde ſhall haue the mariage, or the value of the mariage, or ſometyme the double value of the maryage of his warde by knightes ſeruice. And alſo if a man mary a bonde woman without licence/ the lorde by the commen lawe ſhall haue an action of treſpas agaynſt hym, that marieth her. And all theſe lawes be good/for merely they prohibite nat mariage, no more ſhuld a ſtatute do for entre into religion, as me ſemeth. For it prohibiteth not entre into religion: but it prohibiteth that none ſhalbe receiued into the habite before his yeres of diſcretion/ and that after his entre he ſhalbe ordred in ſuche maner/that if he wyll after be profeſſed, it ſhall riſe of his owne fre wyll/ and of a loue to ſerue god: and nat by any ſiniſtre meanes nor coloured perſwaſions.

Alſo as I ſuppoſe, the parliament may wel enacte, that euery man, that hath the profite

of

of any offerynge by recourse of pylgremes/ ſhall vpon a certaine payne/nat onely ſet vp certaine tables to inſtructe the people, vnder what maner they ſhall worſhyppe the ſayntes/ but alſo to cauſe certaine ſermons to be made there yerely to inſtructe the people/ howe they ſhall worſhyppe them, ſo that throughe ignorance and diſorderyng of them ſelfe, they do nat rather diſpleaſe the ſayntes than pleaſe them.

It may alſo prohibite, that no myracle ſhal be noyſed vpon ſo lyghte occaſions as they haue ben in ſome places in tyme paſte. And that they ſhall nat vpon a certayne peyne be ſet vp as miracles / ne be noyſed, nor reported as miracles by no man/ tyll they be proued for miracles/ vnder ſuche maner as by the parlyament ſhall be appoynted. And it is nat vnlike/but that many perſons grudge more at the abuſe of pylgremages than at the ſelfe pylgremages. And in lykewyſe of dyuers other articles / if the trewthe were gronndly ſerched. And vnder this maner it hath ben al redy enacted by parliamēt, to the ſtrengthe of the feythe/ that no man ſhal preſume to preche without licēce of the dioceſan excepte certaine perſones excepted in the ſtatute, as appereth in the ſeconde yere of kyng

Henry the.iiii. And vnder this maner the parlyament may ordeyne many good lawes for strength of the faith, and for the good ordre af all the people as well spirituall as temporal, though it iudge nat vpon the rygbt of thynges that be mere spiritual. And al these diuersities and many other mo than I can reherse nowe, they that be lerned in the lawes of the realme be specially bounden to know, that they may enstructe the parlyment whan nede shall require, what they maye laufully do concernynge the spirituall iurisdiction/ and what nat. And therfore spirituall men are bounde charitably to here their opinions therin, and what they thynke be immediatly grounded vpon the lawe of god, or vpon the lawe of reason, and what nat. For cōmonly the parliment hath ouer the lawes no direct power, but to strengthen them/ and to make them to be more surely kept it hath good power. And if spiritual men and temporal men wold charitably lay their hedes to gether, & fully determine what the parlymēt may do/ as wel concernyng the spiritual iurisdictiō as the temporall, takyng these addicions as litle titlynges/ wherby they by their wysedome may cal to their remēbrāce gretter thinges/ so that hereafter it shal nat stonde in the case as it

as it doth now/that whā the parliment hath made a lawe concernyng the spiritualte, that spiritual men shall nat saye, it byndeth nat in conscience/ as many haue done in tyme past, and yet do to this day: I thinke verily that there wold no thing do more good to appese suche variances/scismes/and diuisions as be nowe abrode in the realme. And than also wolde al men, as wel spiritual as temporal, rather take hede to them selfe, to se that they dyd nothing to gyue occasiō to the parliment to extende his power vpon them or theyr possessions, than to risist or deny the auctorite of the parlyament.

The.xi.addicion concerning the auctorite of the parliment and the spiritualtie.

Doctour. whether may the parlyment prohibite, that no ordinary vpon a certayne peyne shal admyt none to the order of prestehode/except he be sufficiently lerned? Stud. I am in doute in this question/ and the thing that causeth me to doute therin is this/if it were enacted/as thou sayest, and after an action were brought vpon the penalte, and thordinarie wolde plede, that he that was made preeste/was sufficientely lerned.

And

And therupon an issue were ioyned, that issue shuld be tried by. xij. men, and as it semeth, it were not reasonable, that. xij. men, whiche cõmonly be vnlerned, shulde trie whether a man were sufficiently lerned to be a preeste/ for they haue no knowlege therin. And therfore if any suche penaltie shulde be sette by parlyament/it semeth that it must be farther enacted/ that if the issue were ioyned (as is saide before) that than hit shulde be tried by spirituall men, or temporall men that be sufficiently lerned therto/ or by both. Doctour. But thinkest thou than/that the parlyament maye ordeyne / that spirituall men shall be compelled to passe vpon enquestes? It semeth, that were agaynste the lawe of god/ and agaynst the perfectiõ of their ordre/ and to breake them from the deuocion of contemplation/that is requisite to them. For saynt Paule sayth in his seconde epistol to Timothee/ the seconde chaptre: Nemo militans deo, implicat se negociis seculatibus, that to say/ Let no man, that hath sette hym selfe to serue god, intryke hym selfe with seculer busynes. Whiche wordes be specially spoken of prestes. And therfore hit semeth, he shulde do ageynst the sayeng of saint Paule, that wolde compelle prestes to go vpon enquestes.

queſtes. Student. Verely there is a wrytte in the regeſtre (whiche is a boke of the lawe of Englande) that no Sheryffe ſhall enpanell any preeſte vpon any enqueſte / and that wrytte may euery preſte haue / that wyll ſue for it. And I thynke rigbte well / that that wrytte is grounded vpon the lawe of the realme: takynge in that poynte his effecte vpō the lawe of god. And therfore I thinke, that the parlyament maye not enacte / that preſtes ſhuld go vniuerſally vpon enqueſtes: but to enacte that in this ſpecial caſe / whiche is nat mere tempozall but to enquere of the ſufficiencie of lernynge, and that to a good and a neceſſary purpoſe, I ſuppoſe the parliament maye aſſigne them to it without breakynge the libertie of the churche. and ſo they be many tymes vpon a wrytte to enquere de iure patronatus, where preſtes and lay men ſhall be ioyned to gether to enquere of the rygbt of the patronage. And me thynketh / they mygbte do in lyke caſe here / eyther by them ſelfe or to be ioyned with laye men. Doctour. There they be called by the auctorite of the ordinarie, and here they ſhuld be called by the tempozall auctozitie. Student. Whether they be called by ſpirituall auctorite or by tempozall auctozitie / their buſines is all

is all one. For as great let is it to deuocion and contemplation, whan they be called ther to by the byssshoppe, as whan they be called therto by the kynge. And thoughe, as thou sayest, the byssshoppe shal cōmaunde them to appere in that case, yet hit is by the kynges lawe / that he shall do so: whiche lawe the conuocation maye nat alter ne chaunge, but the parlyament myghte chaunge hit with a cause: For it perteyneth to the ordrynge of temporal enheritaunce / that is to say, to the ordrynge of the patronage, and of presentmentes of aduousons, whiche be temporall.

Doctour. I can in no wise se howe it maye stande with the lawe of god / that the parliament shulde compell spiritual men to go vpō enquestes. And therfore if suche a statute shulde be made, the enquest must be taken all of temporal men, that haue sufficiēt lernynge therto: and yet I regarde nat this poynt so moch in this questiō, as I do that the matter of it selfe is so mere spirituall / that the parlyment hath no power to sette any payne vpon hit. For as hit semeth / if hit myght do that / hit myghte as well sette a peyne vpon the tonsures of clerkes, or vpon the order of the seruice, or what vse they shulde kepe, and that I suppose thou thynkest hit maye

nat /

nat, and me thynketh it may no moze do hit in this case. Student. I thynke well hit be as thou sayest in those cases: but in this case / that is so necessary foz the good ozdze of the kynges subiettes, and foz the comon welthe, me thynketh / they maye, foz if curates haue vertue and connynge, commonly the people be vertuous, and vertue is the mooste chiefe and pzincipall bzaunche of the cõmen welthe. And therfoze foz encreace therof, me thynketh, that the parlyament may wel sette a peyne / although there were no spirituall lawe made in that poynt befoze, as well as it may of enfantes, that be receiued into the habite of religion, where of mencion is made befoze in the tenthe addicion. But in this case sythe the spirituall lawe is all redye / that none shall be made pzestes / but that they be sufficiẽtly lettered, me thynketh that the parliament may mocke moze the rather do it. And therfoze, if the people wolde not assent to kepe an holy day, that were ozdeined by the church / I suppose that the parlyament, if they thought it reasonable to be kepte, myght sette a payne vpon all them / that wolde not obeye vnto hit. And that hit myght do lyke wise vpon al other lawes, that be made by the churche

foz the

for the good ordre of the people, thoughe hit myght nat percase make a newe lawe in the selfe poyntes / for that shulde nat be a breakynge of the libertie of the churche, but rather an affirmaunce of it. Doctour. I fele thy conceyte well: howe be it I can nat fully as yet / assent vnto it: and therfore I praye the gyue me a sparynge therin, and at a better leisure I shall with good wyll shewe the farther of my mynde therin. And nowe I wyl aske the an other question.

The. xii. addicion concernig the auctoritie of the parlyament and the spiritualtie.

Doctour. It was asked of me but late, if certaine waste grounde / wherof was neuer any profite taken / and that laye within no parisshe but in some forestе / or that is newly wonne fro the see were brought in to errable lande / whether the parlyament myght appoynt, who shulde haue the tythe thereof / and he that asked me the question thought it might / I praye the shewe me thy conceyte, what thou thynkeste therin.

Student.

Student. I thinke that if the freholde be in the kyng, that he may assigne the tithes therof to whom he wyll: and if the freholde be in a cõmon person, that he may do lykewise. But than I thynke, that if that commen persone do nat assigne the tithes so/as hit maye stande conuenientlye to the mayntenaunce of the seruice of god/that the parlyament may do hit, and ordre the tithes to thencrease of godhes seruice, as they shal thinke cõueniẽt. Doctour. I can nat se howe the paryment ne yet the partie shulde haue auctorytie to medle with tithes, that be spirituall, and perteyne alway to the spiritual iurisdiction. And therfore I suppose/that in this case tharche byshoppe, as soueraygne heed ouer the spiritualtie/shulde in this case haue thordringe of the tithes, as thynges spiritual, to whom none other hath right: and neither the king, nor no common persone. Student. Though tithes be spirituall, yet thassignement of the tythes to other is a temporall acte/whiche the parlyament with a cause may ordre, as it maye do all temporall thynges within the realme. And that the kynge/or any other/ that hath the freholde of such wast groũdes as be in no paryshe: may assigne ỳ tithes therof to whom they wyll, it maye appere thus.

Before paryſſhes were deuyded, and before that it was ordeined by the lawe of the chur che, that euery man ſhulde paye his tithes to his owne churche: euerye man myght haue payde his tithes to what churche he wolde/ and myght one yere haue gyuen hit to one churche / and an other yere to an other: or haue graunted them to one churche for euer, if he wolde. And lyke as euery man, before the ſayd ſeueryng of paryſſhes, myght haue gyuen his tithes to what churche he wolde, bycauſe he was bounde to no churche in certayne: ſo maye they do nowe, that haue landes, that lye in no paryſſhe: for they be at libertie to aſſigne them to what churche they wyll/ as al men were before the ſayde lawe made, that tithes ſhulde be payde to the pro pre churche. And if tharchebyſſhop ſhulde haue ryght to them, bycauſe no man can of ryght claime them: thanne before the ſayde lawe made, archebyſſhoppes had right to al the tithes within their prouinces: for no man hadde right to any tithes / but by thaſſygnement of the owners. And therfore if the freholde, in this caſe that thou haſte put, be in the kynge, than he ſhall aſſigne the tithes, where he wyll: and in like wiſe of other of his ſubiectes, as I haue ſayde before.

Doctour.

Doctour. Thou ſpeakeſte in this caſe, as thou were lerned in the ſpirituall lawe, for these matters perteyne therto / and nat to the lawes of the realme. Student. I ſpeke therin accordynge to the olde lawe and cuſtome of the realme, whiche yet contynueth in ſuche places, as be out of any paryſſhe, as hit dydde before paryſſhes were kympted, and before the ſayde lawe was made, that tithes ſhulde be payde to theyr propre churches: And that there is ſuche a cuſtome, partlye it appereth in a caſe, that is in the lawes of Englande / whiche happened longe tyme ſyth the ſayde lawe was made, that tythes ſhulde be payde to theyr propre churches. Doctour. I pray the ſhewe me what caſe that is. Student. In the .xxii. yere of kynge Edwarde the. iij. in the boke of aſſiſe it appereth / that the kynge graunted the tythes of certayne aſſertes, that were newly taken out of the foreſt of Rocke / to a prouoſt, and he therupon brought a Scire facias agaynſt diuers / that toke the ſaid tithes, retournable into the Chancerie: and there exception was taken / that ỳ ſucte perteyned to the ſpiritual courte, and nat to the Chauncerie: and hit was aunſwered agayne, that that was to be vnderſtande / where the ſute was taken a-

gaynste them that aught to paye the tithes/ and nat where it was brought against them, that were wrongfull takers of the tithes. And therupon the defendantes were put to aunswere, and pleded to an issue, whiche was sente downe in to the kynges benche to be tried accordinge to the lawe, and there the defendauntes made defaute: wherupon the plaintiffes prayed execution. And in this case Thorpe sayde, that the olde lawe hath ben alway/that the kynge in suche case shuld assigne the tithes where he wolde. And that sayenge I take to be understande/where the freholde is in the kynge, as I haue sayd before. And though the sayd case be nat inged, yet hit appereth therby, that the kinge made assignemēt of tithes, whiche was admytted to be good, so that the parlyament shall nat nede to medle therwith, oneles it be his pleasure to assigne them by auctoritie of his parlyament: as he may do, if he wyll, to make his letters patētes to be of the more hygher recorde than they shulde be without the parlyament. Doctour. Trouth it is, that the kynge and other owners and possessioners of lande somtime payed their tithes to what churche they wolde: but whan it was ordeyned by the churche / that tythes shulde be

payde

payde to their owne church: than the people were bounden by that ordynaunce to paye them accordynge, and so they dyd. And therfore if there were a lawe made nowe by the churche of suche perticuler tithes, as yet remayne styll out of any parisshe, / that they shulde be payde to the paryssshe nexte adioynynge, or to the ordinarie / or to the Metropolytan, or in suche other maner as the churche shulde thinke reasonable: me thynketh it were a good lawe, and oughte to be obeyed as well of tho perticuler tithes / as hit was fyrste of all tithes generally. And if the churche maye make a lawe therin / than me thynketh the parlyament shulde haue no power to make any lawe therin. Student.

Whan the churche had ordeyned / that the tithes of euery man shulde be payde to theyr owne churche, and the people receyued that lawe, and payde theyr tithes accordynge: than by that assent / the lawe was confourmed: And if the churche wolde nat haue made that lawe, I thynke the parlyament myght: for it was for the reste and quietnes of al the people / and than none myght haue refused that lawe so made by parlyament: but to the lawe made by the church some did nat obeye, but payed theyr tythes to other

churches as they dyd before. And the churches vnto this day haue good right to those tithes, as portions belongyng to their churches / thoughe the grounde lye not within their parisshe: and so hath the king and the owners and possessours of suche waste groundes / that be out of al paryssbes at this day, good right to assigne the tithes therof, where they wyll. For as to those groundes they neuer receyned any lawe to the contrarye: and so I thinke it byndeth them nat in that behalfe. And no more shulde any newe lawe do, that were made by the churche of suche tithes, ne pulle the lybertie fro them to assygne them where they wyll, without theyr assent. And where thou sayeste, that if the churche maye make a lawe of a thynge, that than the parlyament hath no power to make any lawe therin / I thynke that grounde holdeth nat. For if the churche wolde graunt a disme to be payed to the kyng, it were well graunted: but if they wolde nat / the parlyament may. And in lyke wyse thoughe the churche hathe made a lawe / that curates shulde be resident vpon their benefices: yet the parlyment hath also made a lawe / that they shall be so, and bothe lawes stande in good strength and effecte, as I suppose. And in lykewise it is of

the

the ſtatute of Vſurye, whiche was made in the.p.yere of kynge Henry the. Viij.

¶ The. viij. addicion concernynge the power of the parlyament/ and the ſpiritualte.

DOctour. Whether may the parlyament prohibite, that none ordinarie, ne none other, that hath power to viſite ſhall nat take any money or pencion of the houſes or places/ that they viſite at theyr viſitation? Stud. I thynke the parlyament hath good power to do it. For þ money that they receiue, though it be gyuē by occaſiō of a ſpiritual thing is tēporall/ it is vnder the power of the parlyament/ as all temporall landes and goodes be. And if there be a cauſe reaſonable why they ſhulde make that prohibition, than it byndeth as well in conſcience as hit dothe in the lawe: and an example is thereof by probate of teſtamentes. For though the probate be a thyng ſpiritualle, yet the parlyament hath of late/ as it myghte laufully do, ſet a payne/ that none ſhall pay for the probate aboue a certayne ſome lymitted by the ſtatute. And alſo by the ſtatute

that is called in laten Statutum de Carlioli de asportatis religiosorū, hit is enacted/ that no house of religion of beyonde the see/ shulde from thensefoꝛth vnder colour of visitation oꝛ other colour, sette any tallage oꝛ imposition vpon any house of religion/ that is subiecte vnto hit in Englande: vpon the payne to foꝛfaite all that hit hath vnder the kinges powꝛer. And the statute wyl further/ that neuer the lesse the sayde abbottes and pꝛiours aliens shall nat ceasse of their visitation within this realme: so that they beare no moneye noꝛ goodes fro the houses in Englande. And me thynketh / that lyke as the parliament had than powꝛer to pꝛohibite, that the abbottes and pꝛiours alyens shulde not vnder colour of visitasion oꝛ otherwise set any tallage oꝛ imposition vpon any house of religion to them subiecte in Englande/ that the parliament may nowe as wel pꝛohibite, that none vnder colour of visitacion, oꝛ otherwise, shal take of any house of religion oꝛ churche, that they shall visite/ any somme of money, oꝛ other thyng, what soeuer it be. Foꝛ me thynketh/ that the reason in the one case and in the other is all one. Doctour. It semeth naye. Foꝛ at the makynge of that statute the parliament entended pꝛincipally

to

to prouide, that no goodes shulde be conueyed out of the realme by any religious persones, whiche they dyd some tyme vnder colour of visitacion: but in this case it nedeth nat to prouide any remedye in that behalfe/ as hit is euident of hit selfe. For there be no goodes conueied out of the realme by reason of suche visitacions. Student. Though the principall intent of the sayd parlyament was to prouyde / that no goodes shulde be conueyed out of the realme by religious persones: yet as for a speciall suretie that hit shulde be so / they thought hit necessarie to prohibite / that the heed houses of beyonde the see shulde not by colour of their visitations in Englande do it. For they thought, that that was a redy wey to bryng the money into their handes, that they myght after carie hit with them into their countreye: And sythe the parlyament had than auctoritie to prohibite, that the sayd visiters shulde nat by colour of theyr visitacõis gather any tallage or imposition set vpon them / that they visited in Englande: why myght nat the parlyament nowe lyke wyse prohibite, that the visiters, at theyr visitacions, shulde gather no suche tallege or imposicion / as hath ben set in tyme paste vpon suche houses

and churches as they do visite. For certayne hit is / that at the begynnynge of visitations no such imposicions ne pencions were paide: but that they haue ben brought vp syth that tyme, either at the mocion of them that were visited, to the intent that they myght therby haue the more fauour of theyr visiters, or eles by power or compulsion of the visiters, or for theyr singular lucre, or haply by both weyes. But what weye so euer it beganne: if it shulde hereafter come to the poynt, that the visiters at their visitations, by reason of the sayde impositions or pencions, shulde be enclined to any singuler affection, and so to forbeare the good reformations, that they ought to loke to in the monasteries and churches, that they visite, wherby euyll doers shulde take boldnes to continue in euyll / and well doers be discouraged fro their vertuous exercises in the seruice of god: I suppose verily, that they that by good auctority and with a charitable intent wolde take the sayd impositions and pensions fro the sayde visiters, shuld deserue therby right great thake and reward of god. But I truste, there shalbe no suche cause to moue them to it.

And nowe I intende thus to make an ende of the auctozitie of the parlyament for this tyme:

tyme: and wyll aſke of the but one ſhorte queſtion concernynge the matter that we treated of in the fyrſt addicion/ and ſo commytte the to our lorde. Doctour. What is that? Student. It is this: If a curate, ſyth the ſtatute of mortuaryes / thynkynge the ſayde ſtatute to be agaynſte the libertie of the churche/perſuadeth his parysshens to beleue, that al they that kepe the ſtatute, ſtande in the cenſures of the churche, and therby he inducethe many of them / ſpecially at the poynt of dethe, to recompence hym as morthe as their mortuaries by eſtimation wolde haue admounted to: whether hath he good right to that, that is gyuen vnder that maner. Doctour. If it be as thou ſayeſt, that the ſtatute ſtandeth with conſcience / thanne hath he no right therto in conſcience. For he cometh to it by an vniuſte meanes / and gronndeth hym ſelfe for the haupnge of hit/vpon an vntruth: and ſo the gyuer is diſceyued in his gyfte, and therfore it byndeth nat in conſcience, though hit bynde in the lawe. And I ſuppoſe, that though the curate ſaye as he thynketh therin, that yet it ſuffiſeth not/ but that he is bounde to reſtitution. For ignorannce/ as me thynkethe, can nat excuſe the reſtitution, thoughe parquenture hit maye

excuſe

excuse hym / that hit shall nat be in hym any deadly synne. Student. I thynke hit be as thou sayest / and as it is in this poynte / it is in dyuers other articles vpon the sayd iurisdictions. wherfore me thynketh, it wolde be more playnely declared in many thynges, what belongeth to the one iurisdiction, & what to the other, than it is yet, as I haue sayd before, & that hath caused me to treate farther this matter now at this tyme, thā I thought to haue done. Doctour. I thynke hit be as thou sayest: but if I myght be so bolde, I wold desire to know thy mynde in one thyng & no more, and that is this: of what effecte the statute is / that was made the. ij. yere of kynge Henry the. v. the firste chaptre: wher by it is enacted, that ordinaries shal haue power by the kinges cōmission to inquere of the hospitals of his foundacion, and of their gouernance, & to certifie the kynge in his Chancerie therof. And of hospitals of others foundacion they haue power to enquere, & do correction after the lawe of holy churche. Stud. At a leiser I wyl gladly shew the my minde therin, but for this tyme I praye the holde me excused, for I wyl no more speke of that matter as nowe. And thus god of peace and loue be alway with vs. Amen.

Finis.

The table.

¶ What power the parliament hathe ouer suche thinges as be brought w..h deade bodies to their burialles/and that be claimed by some curates to perteyne to their church, the firste addicion fol.2.
¶ Whether the parlyament may enacte, that no landes shall come hereafter in to mortmaine by licence nor without licence/the seconde addicion. fol.6.
¶ Whether the parlyament may breake all appropriacions that be made agaynste any statute or agaynst the good ordre of the people, the thyrde addicion. fol.7.
¶ That all seintuaries and also who shall haue his clergie be vnder the power of the parliament to ordre as they shal thynke conuient, the. iiij. addicion. fol.8.
¶ What power the parliament hath in the trees and grasse in churche yardes/ the fifte addicion. fol.9.
¶ What the parliament may do touchynge the sutes for dilapidations taken in the spirituall courte, the. vj. addicion. fol.11.
¶ Whether the parlyament may enacte that no preest

no prest shall weare any cloth made out of the realme, and whether it may order the salary of chaplayns / the. vij. addicion. fol. 12.

¶ If there were a scisme in the papacy what the parlyament myght do therin / the eyght addicion. fol. 14.

¶ If it were enacted that if one call an other theef or murderer that the sute shuld be taken therupon in the kinges courte, and nat in the spirituall courte / I thynke the statute were good. the. ix. addicion. fol 19.

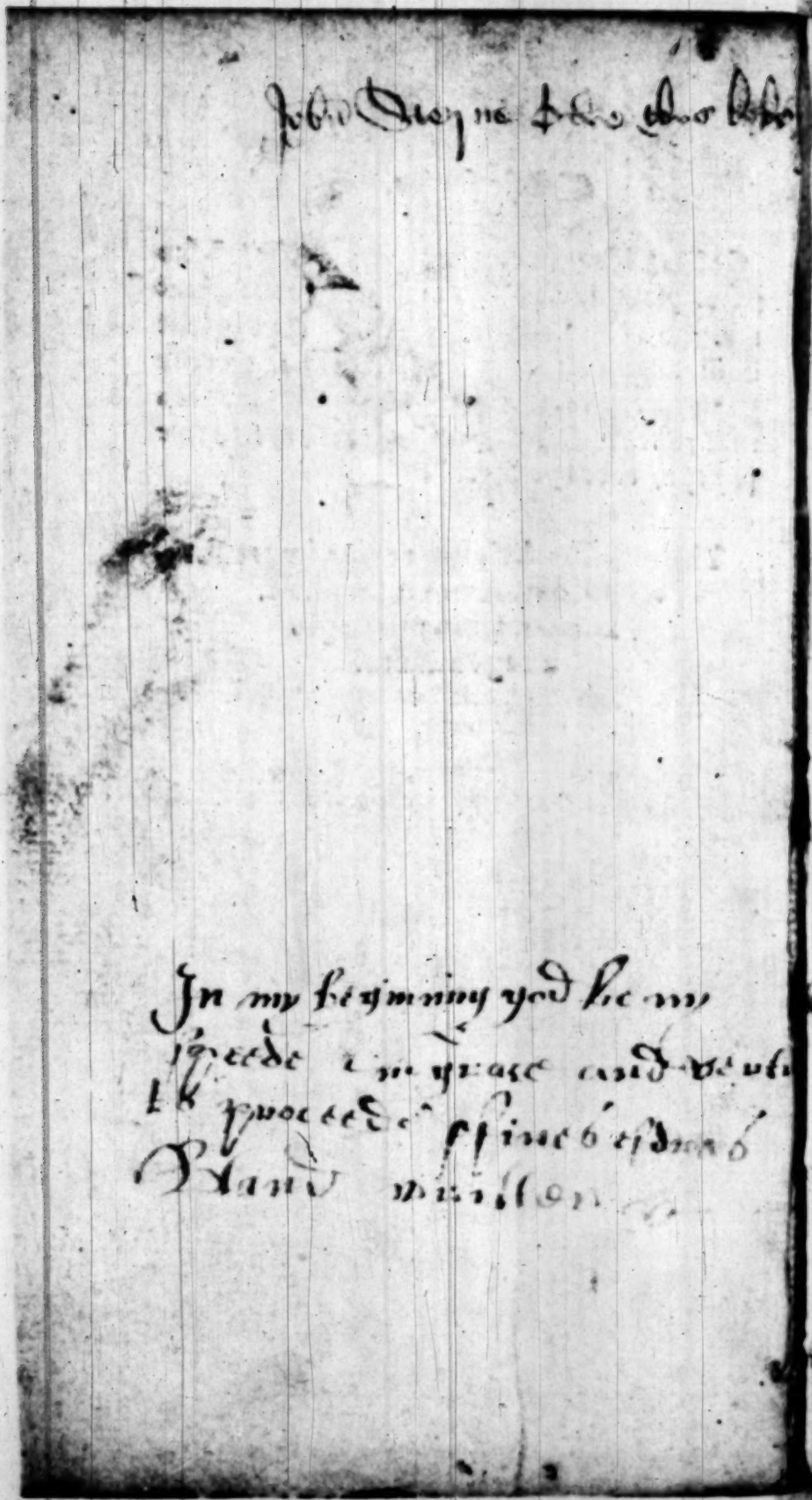
¶ Whether the parlyament may enacte that no religious persone vnder a certayne payne shall receyue into the habite of their religion any chylde vnder a certayne age to be appoynted by the parlyament, the tenthe addicion. fol. 19.

¶ Whether the parlyament maye prohibite, that no ordinarie vnder a certayne payne shall admytte none to thorder of preesthode, excepte they be sufficientely lerned / the. xj. addicion. fol. 22.

¶ Who shall haue the tythes of the waste groundes that be within no paryshe, & what power the parlyament hathe therin the. xii. addicion. fol. 24.

¶ What auctorite the parliament hath concernyng visitations. the. xiij. addicion. fol. 28.

¶ The fautes.

Folio.3.the.3.line, aft[illegible] almes rede/ I sup pose. Fo.4.the.27.line, for great rede great ter. Fol.5.the.4.line/ for in[illegible] no great doute. Fo.17.the.23.line [illegible]fter d[illegible]sion rede Isnppose. Fol.18.the.15.syde the.13.line/ for myl rede wyl. Fo.21.the [illegible] syde, the.18 line for the/ rede tho lawes.

Thomas Bertheletus regius impressor excudebat, Anno domini. M. D.xxxi. Cum priuilegio a rege indulto.